IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1221 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMJUSHA JIVASHA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1221 of 2004

MR NN PRAJAPATI for Appellant No.

THROUGH JAIL for Appellant No.

MR PD BHATE Ld. APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 21/09/2004

ORAL JUDGEMENT

1. Admit.

2. The appeal was heard today itself on the request of the ld. advocates for the parties.

3. This appeal has been preferred by the appellant through jail only on the issue whether the sentence awarded for the charges proved under sec. 323 and 452 separately, should run concurrently.

4. Ld. advocate Mr NN Prajapati for the appellant and ld. APP Mr PD Bhate were heard. On 28.11.1996, complainant Premilaben wd/o Bhojabhai Mohanbhai gave a complaint against the present appellant under sec. 452, 324, 354 and 506(2) of Indian Penal Code and for the charges under sec. 3(10)(1) of the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989. According to the complainant, she resided at Sector no. 24 in hutment. She had two sons and one daughter. The name of the daughter was Hansaben, who had married at village Jekada, but she was residing with Premilaben. On the day of incident, at about 1.00 hrs. at night, when Hansaben went for answering a natural call, Premilaben noticed one person standing beside Hansaben. The said person had a stick in his hands and by this stick he raised a blow. On focussing, Premilaben knew that the said person was accused Fakir Ramjusha Jivasha. The appellant inflicted a blow above left eye and Hansaben fell down. The brother and sister of Hansaben were also awakened and first they went to the police station and from there, they went to the hospital. It was alleged that with bad intention, the accused-appellant committed trespass in the house of the complainant and threatened to kill. The said complaint was registered, investigated and charge-sheet came to be filed in the court of ld. Judicial Magistrate, First Class, Gandhinagar and case came to be committed to the Court of Sessions.

5. After recording of the evidence and hearing the parties, vide judgment dated 15.5.2004, ld. Addl. Sessions Judge, Fast Track Court, Gandhinagar, convicted the present appellant for the offence proved against him under sec. 323 of Indian Penal Code and sentenced him to undergo R/I of six months and fine of Rs. 500/-, in default, to undergo R/I of 15 days. For the charges proved against the appellant under sec. 452 of Indian Penal Code, also the appellant was sentenced to undergo 6 months' R/I and to pay fine of Rs. 500/-, in default, to undergo 15 days' R/I. On other charges levelled against the appellant, he was acquitted.

6. By filing this appeal against the above said judgment and order of ld. Addl. Sessions Judge, Fast Track Court, Gandhinagar, the only grievance expressed by the appellant is in respect of the sentences to run consecutively awarded to the appellant for charges levelled against him under sec. 323 and 452 of Indian Penal Code instead of to run sentence concurrently. His request in this appeal is to direct that both the sentences should run concurrently.

7. When an offence for which the sentences are inflicted arises from one transaction, under sec. 427 of the Code of Criminal Procedure, the trial court inflicting sentences may exercise discretion to run the sentences awarded for each charge to run concurrently. The expression used under sec. 427 of the Code of Criminal Procedure, is amply clear that unless the court exercises its discretion, the sentences awarded for each of the charge shall run consecutively. In the judgment and order under challenge, no such direction is given by the trial court and hence, the sentences awarded to the appellant for the charges levelled against him under sec. 452 and 323 of Indian Penal Code, shall run consecutively. This is the exact grievance, for which this appeal is filed.

8. There cannot be any positive guideline as to when and in what manner court should exercise discretion to direct sentences run concurrently. It depends on the facts and circumstances of each case. Nowadays, we hardly find any case in which sentences awarded for different charges in the same transaction, are not directed to run concurrently. Apart from this practice, having regard to the facts and circumstances of the case, it would be in the interest of justice, if the request of the appellant is granted with a direction under sec. 427 of Code of Criminal Procedure to run both the sentences concurrently. The appellant has not challenged the judgment and order on merits.

9. This appeal is allowed. It is directed that sentences of imprisonment inflicted by the trial court for the offence under sec. 323 of Indian Penal Code proved against the appellant as well as the sentence of imprisonment awarded to the appellant for the charge proved against the appellant under sec. 452 of Indian Penal Code, shall run concurrently. The judgment and order of the trial court is modified to this extent only. A copy of the writ be sent to the appellant through jail authority.

(J.R. VORA, J.)

mandora/